

H. Churchill Duke of Marlborough
The Most Noble John, Duke of Marl- } Appellant.
borough,

Sir ROBERT RAYMOND, Kt. }
Attorney-General, }
Edward Strong, Sen. and Edward } Respondents.
Strong, Jun. }

The Case of the Respondents, Edward Strong, Sen. and Jun.

HIS Grace the Duke of Marlborough having resolved to build a large Man-
sion House at Woodstock in the County of Oxon: And the Service of Her late
Majesty Queen ANNE and the Kingdom calling his Grace Abroad into Parts
beyond the Seas, he requested the Right Honourable Sidney Earl Godolphin, who
was then Lord High Treasurer of England, to act for his Grace, employ such Persons, and
make such Contracts on his Grace's Behalf, in relation to the said Building, as the said
Earl should judge proper, and give such Directions from Time to Time concerning the
same, as his Lordship should think necessary.

June 9, 1705.

THAT in pursuance thereof, the said Earl Godolphin, by an Instrument under
his Hand, reciting, "That his Grace the Duke of Marlborough had resolved to erect a large
" Fabrick for a Mansion House at Woodstock in the County of Oxon; He, the said Earl, did, at
" the Duke's Request and Desire, and for and on his Behalf, appoint Sir John Vanbrugh to be
" Surveyor of all the Works and Buildings so intended to be erected at Woodstock, and did
" thereby empower him to make and sign Contracts with any Persons for Materials, and
" with any Attificers and Workmen to be employed about the said Buildings, in such
" Manner as he should judge proper for carrying on the said Work in the best and most
" advantageous Manner; and to employ such Day-Labourers and Carriages as he should
" find necessary for the said Service; and to do all other Matters conducive to the effe-
" ctual Performance of what was directed by the said Duke of Marlborough, relating to the
" said Works. And the said Earl Godolphin thereby authorized and required the said Sir
" John Vanbrugh to lay before him from Time to Time, in the Absence of the said Duke,
" an Account of his Proceedings therein, together with what he should think necessary to
" be observed, or wherein further Instructions might be wanting, that the same might be
" given accordingly.

May 10, 1706. Ar-
ticles between Sir
John Vanbrugh and
the Respondents, for
building Blenheim
Castle.

IN pursuance of which Power, Sir John Vanbrugh, on Behalf of his Grace, entred into
an Agreement with the Respondents, by Articles under his and their Hands and Seals,
whereby the Respondents did covenant with the said Sir John Vanbrugh, in Consideration
of the Materials of Stone, Lime, Sand, Water, and Scaffolding found at the Duke's Ex-
pence, and delivered at convenient Distances and Places by Blenheim Castle, then building
in Woodstock Park, and of such Rates and Prices for the respective Masons-Works as were
there under-mentioned. That the Respondents should perform all such Masons-Work as
should be ordered them to be done there, pursuant to the Orders and Designs, and according
to the Directions given them from Time to Time by the said Sir John Vanbrugh or his
Assigns; the Respondents finding at their Expence, all Workmanship and Labour, and
Hoisting, Setting, and making up of Mortar, and setting up of Scaffolds. And it was there-
by further agreed, That all Materials and Utensils of Work and Scaffolding should be pro-
vided at his Grace's Charge, (except Tackle-Block, Snatch-Block, and Ropes that work in
them, together with Jacks, Crows, Working Iron Tools, and Bars for moving Stones,
which were to be found by the Respondents.) And Capstalls, if any should be wanting, were
to be made by his Grace; also the Ways made good, and Sheds cleaned, as Occasion required.

And the said Sir John Vanbrugh, on his Grace's Behalf, thereby covenanted, That the
Respondents should have such frequent Measurements, stating of Accounts, and Ad-
vance of Money thereon, that they should not expend of their own Money above 500 l.
at any Time, the better to enable them to carry on and finish the said Work.

THAT the Materials and Stone were to be laid on that Side of the House where it
was to be used, by his Grace, and the Sawing of Stone of all sorts was to be at his Expence.
And the Respondents were to proceed in the said Work with such Speed as should be re-
quired: Provided they were not hindred by Want of Materials and reasonable Supplies
of Money,

Respondents continued
in the Works, and
found Materials, from
May, 1706, to Aug
1712.

THAT in pursuance of the said Agreement, the Respondents entred upon the said Works,
and found Materials, and continued so to do until some Time in August, 1712, and per-
formed such Work on the Credit of his Grace; and from Time to Time made out their Bills to his
Grace for such Work and Materials, which were measured, cast up, stated, and signed by
Sir John Vanbrugh, Henry Joynes Tillemant Bobart, and William Jefferson, or some of them,
being Persons appointed for that Purpose by his Grace, or by the Earl Godolphin on his Grace's
Behalf, and not as they were Officers of the Crown.

THAT Her late Majesty being graciously pleased to contribute to the Charge of ere-
cting the said Building, and buying in the several Offices of the Manor and Park of Wood-

Febr. and March.

1704.

June 21, 1705.

the Inheritance of the Tythes and other Incumbrances thereon; or on the Hundred of Wotton, in the County of Oxon; Warrants accordingly issued for the Payment of 13,000 l. for those very Purposes.

A Warrant issued for the Payment of 20,000 l. to John Tailer, Gent. Deputy to Samuel Travers, Esq; in which Warrant it is mentioned to be for building the Mansion House and Gardens then lately begun by the Direction of his Grace the Duke of Marlborough.

THAT other Warrants, under Her late Majesty's Sign Manual, were issued for the Payment of several other Sums amounting to 200,000 l. for the same Uses: All which said Sums of Money so issued for and towards building the said Mansion House, and making the Gardens, are by the respective Warrants made payable to the said Mr. Tailer without Account, except to his Grace.

THAT several of the Respondents Bills have been paid them by the said Mr. Tailer, and the Residue thereof amount to 12,526 l. 10 s. 3 d. whereof the Respondents, the 6th of October, 1711, received in part from the said Mr. Tailer, 554 l. 5 s. 10 d. and the 22d of December following, 1000 l. more; so that there then remained due to the Respondents from his Grace, 10,972 l. 4 s. 5 d. besides 50 l. for Work measured since.

THAT the Respondents between the 22d of December, 1711, and the Time of the Demise of Her late Majesty, (not being able to get any Money in that Time from Mr. Travers or Mr. Tailer) made frequent Applications to his Grace, desiring him to pay the said 10,972 l. 4 s. 5 d. and 50 l. but without Success.

Anno primo Georgii
Regis, fol. 283, 310,
311.

THAT after the Demise of Her late Majesty, his Grace was pleased to tell them he had procured a Clause to be inserted in an Act of Parliament passed in the first Year of His present Majesty's Reign, for satisfying an Arrear for Work and Materials at *Blenheim, &c.*

THEREUPON the Respondents being desirous to receive a Satisfaction any way that would be effectual; And being assured, that upon Application to the Treasury speedy Payment would be made of all their Demands, made such Application; and in January, 1715, received from Samuel Travers, Esq; the Sum of 3657 l. 8 s. 1 d. in part of their said Debt of 10,972 l. 4 s. 5 d. which was settled and allowed by William Lowndes, James Craggs, and William Sloper, Esquires, appointed for that Purpose.

THAT upon the Respondents receiving the said Sum of 3657 l. 8 s. 1 d. They, at the Instance of Mr. Travers, and for his Justification, signed one or more Receipts in the form he had prepared the same, not in any wise waving the Remedy they might otherwise have for the Residue of their said Demands, nor in the least imagining the Receipts thus given would ever be made use of against them for that Purpose.

THAT by such Payments the Debt was reduced to 7314 l. 16 s. 4 d. And the Respondents finding they were to expect no farther Payment at the Treasury, they again had Recourse to his Grace, who at last absolutely refused to pay the same.

Respondents exhibited
their Bill in Exche-
quer against his
Grace in Easter Term,
1718.

WHEREFORE the Respondents in Easter Term, 1718. exhibited their *English Bill* in His Majesty's Court of Exchequer against his Grace, Sir John Vanbrugh, and His Majesty's Attorney-General, thereby setting forth the several Matters aforesaid, prayed that his Grace might be decreed to pay the said 7314 l. 16 s. 4 d. with Interest, and that the Respondents might be relieved in the Premises.

TO which Bill the said Defendants put in their several Answers.

His Grace's Cross Bill
against Respondents in
Michaelmas Term,
1718.

THAT his Grace exhibited his Cross Bill in the said Court of Exchequer against the Respondents, His Majesty's Attorney-General and others, to be relieved touching the Premises; and pray'd a perpetual Injunction against the Respondents to stay their Proceedings against him, for a Satisfaction of any of their Demands mentioned in their Bill at any time before the first of June 1712.

Causers heard the 9th,
20th and 21st of Fe-
bruary last, and his
Grace decreed to ac-
count with, and sa-
tisfy the Respondents.

TO which Cross Bill the Respondents and the Attorney-General having put in their several Answers, and Issue being joined in both the said Causes, Sir John Vanbrugh, and several other Witnesses were examined therein on both Sides, and the said Causes came on to be heard before the Lord Chief Baron, and the rest of the Barons of His Majesty's Court of Exchequer, on the 9th, 20th, and 21st Days of February last: And the said Court, after a full and deliberate Hearing of what was insisted on by the Counsel of both sides, Declared "That his Grace the Duke of Marlborough was bound by the Instrument signed by the Earl Godolphin, on his Grace's behalf, appointing Sir John Vanbrugh Surveyor of the Works and Buildings at Woodstock, and empowering him to make Contracts with Artificers and Workmen to be employ'd about the said Buildings: And also by the Contract made by the said Sir John Vanbrugh with the Respondents, in pursuance thereof, and ought to pay what remained due to them for the Works done, and Materials found by them at Woodstock, by Vertue of the said Contract; and did therefore order and adjudge, that his Grace's Cross Bill against the Respondents, and his Majesty's Attorney-General, should be dismissed with Costs: And the said Attorney-General was also dismissed of and from the Original Bill of the Respondents. And it was farther ordered and decreed by the said Court, that his Grace should account with, and satisfy the Respondents for what remained due to them for the Works by them done, and the Materials by them furnished for the said Buildings at Woodstock, pursuant to the said Contract, the taking of which Account was referred to the Deputy of his Majesty's Remembrancer, with such Directions, touching the taking the same, as are usual.

FROM which Decretal Order his Grace the Duke of Marlborough hath appealed and objects,

obj. 1st.

FOR that it appeared by the Acts of Parliament, and otherwise, that the said Building was begun and carried on at the sole Expence of her late Majesty, till the first of June 1712, during which time it was not pretended that any Application was made to his Grace for, or that he laid out any Money upon that Account.

THAT

Ans. 1st.

T H A T inasmuch as the Contract was made at the Instance, and on the Behalf of the Duke, before the making of any Act of Parliament relating to the said Building, and the Money issued for the said Buildings was without Account to be given thereof, except to his Grace, and the Workmen's Bills were from Time to Time made out to his Grace, and the Payments made thereupon were by those who acted as his Grace's Agents. And as the sole Conduct and Management in carrying on the Building was under the Direction of his Grace and the Dutches, the Respondents still acted on the Credit of his Grace, and look'd upon him as their Pay-Master, And therefore humbly apprehend, That tho' by the Act made in the first Year of His present Majesty's Reign, it was directed that the Money remaining due to the Artificers and Workmen on Account of the Buildings and Works at *Blenheim*, on or before the first of *June* 1712, should be paid out of the Arrears of the Revenue granted to Her late Majesty for the Use of Her Civil Government; Yet that the Contracts made so long before, were not discharged, nor their Remedy against his Grace destroyed or lessened thereby.

Ans. 2d.

T H A T as the Money which was issued on Account of the Building in the Reign of her late Majesty, was under the Direction of the Duke, and was without Account, except to his Grace; so there is no doubt, but the Money issued by virtue of the Act, in the First Year of his present Majesty's Reign, is, and will be, under the same Controul: For that the Persons intrusted with the Payment of it, refused to pay any Part thereof to the Respondents, without his Grace's Directions.

Obj. 2d.

T H A T after the Building was carried on at his Grace's Expence, the Prices thereof were considerably lower than when it was carried on at the Expence of Her Majesty; and therefore ought not to be decreed to pay the Prices agreed to by Sir *John Vanbrugh*, or any Accounts allowed by him, or any Officers of the said Works; but ought to be at liberty to controvert the Respondents Accounts, and the Prices charged for the said Work from the beginning,

Answer.

T H A T his Grace by his Defence, insisting that the Crown, and not He, ought to be the Respondents Pay-Master, and never disputing the Prices, till by an Exhibit proved at the Hearing, (which was written by one of his Grace's Servants, after a stop was put to the said Works, in *June* 1712.) the Respondents were advised, they had no occasion to prove the Reasonableness of the Prices, which were all settled by the said Contract with Sir *John Vanbrugh*, who before he contracted with the Respondents, had received Proposals from several of the most substantial and eminent Men of the Trade, and found the Respondents Prices the most Reasonable.

Obj. 3d.

T H A T the Earl *Godolphin* contracted with the Respondents as Lord Treasurer, and not at the request or on the behalf of the Duke of *Marlborough*.

Ans. 1st.

T H A T altho' the Earl was Lord Treasurer, yet it appears under his Hand, that he made such Contract with Sir *John Vanbrugh*, at the Request, and on the Behalf of his Grace.

Secondly.

May 23, 1705.

The Earl *Godolphin* contracted with Mr. *Joynes*, to admeasure the Works, &c. and in that Contract, 'tis recited, "That whereas the Duke designed to build a large Fabrick, his Lordship contracts with him at the Request and on the Behalf of his Grace."

Thirdly.

Septemb. 24, 1708.

Mr. *Bobart*'s Constitution to be Comptroller of the Works, is the same with those of Sir *John Vanbrugh* and Mr. *Joynes*, only this recites three other Appointments of the Officers of the Works, made by the Earl at the Instance and desire of his Grace. And by the Contract he made with Sir *John Vanbrugh*, Sir *John* is required to lay before his Lordship, from Time to Time, in the Duke's Absence, an Account of his Proceedings; And why in the Duke's Absence only? If the Contract had been for Her late Majesty, it must have been as well when the Duke was here, as in his Absence.

Fourthly.

HIS Lordship's Integrity and Understanding was so great, and so well known, that no body will believe his Lordship would have said he contracted at the Request and on the Behalf of the Duke of *Marlborough*, if it was not true.

Fifthly.

HIS Lordship's known Respect and Friendship for the Duke, would not have permitted him to subject his Grace to a Contract, to the performance whereof it was never intended he should be liable.

Sixthly.

I F the Earl *Godolphin* had made such Contracts as Lord Treasurer, and on the Behalf of Her Majesty, he was so cautious, and so great a Master of the Affairs of the Treasury, that some Entry or Memorial thereof would have been made in the Books of the Treasury; whereas there is no Entry or Memorial of any Contract relating to the Buildings at *Woodstock* to be found in any of the Books there.

Seventhly.

HIS Grace, when in *England*, was frequently at *Blenheim*, giving the necessary Directions touching the carrying on the Buildings pursuant to the Contracts, and never mentioned to the Respondents that he was not to be their Pay-Master, or that the Contracts were not made at his Request or on his Behalf.

Obj. 4th.

T H A T the Officers employed in relation to the Buildings at *Woodstock*, were the Officers of the Crown.

Ans. 1st.

'T I S true some of them were, but in different Capacities from what they were in under the Crown; and 'tis as true, that what they did in relation to the building of *Blenheim* Castle, was not as Officers of the Crown, but as nominated and appointed to those Employments, by or on the Behalf the Duke of *Marlborough*, which were different to what they were employed in under the Crown: For Sir *John Vanbrugh* was Comptroller of Her late Majesty's Works, yet he is appointed Surveyor of the Buildings at *Woodstock*, which was the proper Office of Sir *Christopher Wren*, on Behalf of the Crown.

Secondly.

Mr. *Travers* was Surveyor of the Lands of the Crown, and Mr. *Tailer* was his Deputy, and as such had nothing to do with the Receipts and Payments of the Money for the Buildings at *Woodstock*, but as appointed to that Purpose, by or on the Behalf of the Duke of *Marlborough*.

Henry

Henry Jagues, William Bebars and William Jefferson, were appointed to measure the Works, and to cast up, state, and sign the Respondents and other Workmens Bills for the Building at Woodstock, but were not Officers of the Crown, nor would have had any Power to do it, if they had not been appointed thereto by the Duke or by the Earl Godolphin on his Behalf.

T H A T the Respondents having performed the Work in every respect according to their Contract, ought in Justice to be paid. And having no Means to recover the same from the Crown, if his Grace be not liable, they are wholly without Remedy, and must lose the Remainder of their Debt.

For all which Reasons, the Respondents humbly hope the said Decree shall be affirmed, and the Appeal dismissed with Costs.

**CON. PHIPPS.
THO. BOOTLE.**

Duke of Marlborough, Appellant

*The Attorney-General,
Edward Strong, Sen. Respondent
and Jun.*

*The CASE of the Respondents,
Edward Strong, Sen. and Jun.*

To be Heard at the Bar of the House of

Lords on Tuesday the 23d of May, 1721.